

2019 Regular Session

SENATE BILL NO. 164

BY SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH/ACC INSURANCE. Provides relative to the administration of prescription drug benefits. (8/1/19)

1 AN ACT

2 To amend and reenact R.S. 22:1006.1(A), 1053(D), and 44:4.1(B)(11), to enact R.S.

3 22:1053(E) and (F), and Subpart P of Part III of Chapter 4 of Title 22 of the

4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1260.41 through

5 1260.46, and to repeal R.S. 22:1657, relative to the administration of prescription

6 drug benefits; to provide for prior authorization; to provide for step therapy; to

7 provide for licensure of pharmacy benefit managers; to provide for prohibited

8 conduct; to provide for consumer access to information; to provide for an exception

9 to the Public Records Law; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:1006.1(A) and 1053(D) are hereby amended and reenacted and

12 R.S. 22:1053(E) and (F) and Subpart P of Part III of Chapter 4 of Title 22 of the Louisiana

13 Revised Statutes of 1950, comprised of R.S. 22:1260.41 through 1260.46, are hereby enacted

14 to read as follows:

15 §1006.1. Prior authorization; forms required; criteria

16 A. As used in this Section:

17 (1) "Health benefit plan", "plan", "benefit", or "health insurance coverage"

1 means services consisting of medical care, provided directly, through insurance or
 2 reimbursement, or otherwise, and including items and services paid for as medical
 3 care under any hospital or medical service policy or certificate, hospital or medical
 4 service plan contract, preferred provider organization, or health maintenance
 5 organization contract offered by a health insurance issuer **that may or may not be**
 6 **administered by a pharmacy benefit manager**. However, excepted benefits are not
 7 included as a "health benefit plan".

8 (2) "Health insurance issuer" means ~~any~~ **an** entity that offers health insurance
 9 coverage through a plan, policy, or certificate of insurance subject to state law that
 10 regulates the business of insurance. "Health insurance issuer" shall also include a
 11 health maintenance organization, as defined and licensed pursuant to Subpart I of
 12 Part I of Chapter 2 of this Title.

13 (3) "Prior authorization" ~~shall mean~~ **means** a utilization management
 14 criterion utilized to seek permission or waiver of a drug to be covered under a health
 15 benefit plan that provides prescription drug benefits.

16 (4) "Prior authorization form" ~~shall mean~~ **means** a single uniform
 17 prescription drug prior authorization form used by all health insurance issuers,
 18 including any health insurance issuer pharmacy benefit managers, for the purpose of
 19 obtaining prior authorization.

20 * * *

21 §1053. Requirement for coverage of step therapy or fail first protocols

22 * * *

23 **D. A group health plan shall not require a covered person to follow a**
 24 **plan's step therapy protocol if the prescribed drug is on the plan's prescription**
 25 **drug formulary and the patient has tried the step therapy required prescription**
 26 **drug while under his current or previous health insurance or health benefit**
 27 **plan, and the provider has submitted justification and supporting clinical**
 28 **documentation that such prescription drug was discontinued due to lack of**
 29 **efficacy or effectiveness, diminished effect, or an adverse event. Pharmacy drug**

1 samples shall not be considered trial and failure of a preferred prescription
2 drug in lieu of trying the step therapy required prescription drug.

3 E. The provisions of this Section shall not be construed to prevent:

4 (1) A group health plan from requiring a patient to try a generic
5 equivalent of a prescription drug before providing coverage for the equivalent
6 brand-name prescription drug.

7 (2) A practitioner from prescribing a prescription drug that the
8 practitioner has determined to be medically necessary.

9 ~~D.F.~~ As used in this Section, a "health coverage plan" shall mean any
10 hospital, health, or medical expense insurance policy, hospital or medical service
11 contract, employee welfare benefit plan, contract or agreement with a health
12 maintenance organization or a preferred provider organization, health and accident
13 insurance policy, or any other insurance contract of this type, including a group
14 insurance plan and the Office of Group Benefits programs that may or may not be
15 administered by a pharmacy benefit manager.

16 * * *

17 SUBPART P. PHARMACY BENEFIT MANAGERS

18 §1260.41. Short title

19 This Subpart shall be known and may be cited as the "Louisiana
20 Pharmacy Benefit Manger Licensure and Regulation Act".

21 §1260.42. Findings and purpose

22 A. The legislature finds that it is necessary to establish the standards and
23 criteria for the regulation and licensure of pharmacy benefit managers
24 providing claims processing services or other prescription drug or device
25 services for health benefit plans.

26 B. The purpose of this Subpart shall be:

27 (1) To promote, preserve, and protect the health, safety, and welfare of
28 the public through effective licensure and regulation of pharmacy benefit
29 managers.

1 (2) To provide for the powers and duties of the commissioner of
2 insurance.

3 (3) To provide for penalties and fines for violations of this Subpart.
4 §1260.43. Pharmacy benefit manager; licensure

5 A. A person or organization shall not establish or operate as a pharmacy
6 benefit manager in this state for health benefit plans without obtaining a license
7 from the commissioner of insurance pursuant to this Subpart.

8 B. The commissioner shall prescribe the application for licensure to
9 operate in this state as a pharmacy benefit manager and shall assess fees as
10 provided for in R.S. 22:821.

11 C. The commissioner shall promulgate and publish rules and regulations,
12 in accordance with the Administrative Procedure Act, to establish the licensing
13 standards, applicable fees, application, financial standards, renewals, and
14 reporting requirements for pharmacy benefit managers under this Subpart.

15 D. As a condition of licensure, each pharmacy benefit manager shall
16 obtain a surety bond of no less than one million dollars.

17 §1260.44. Enforcement

18 A. The commissioner of insurance shall have enforcement authority
19 relative to this Subpart and the rules and regulations promulgated pursuant to
20 this Subpart.

21 B. The commissioner may examine or audit the books and records of a
22 pharmacy benefit manager providing claims processing services or other
23 prescription drug or device services for a health benefit plan to determine if the
24 pharmacy benefit manager is in compliance with this Subpart and the rules and
25 regulations promulgated pursuant to this Subpart. All information or data
26 acquired during an examination conducted pursuant to this Section shall be
27 considered proprietary, confidential, and not subject to disclosure pursuant to
28 R.S. 44:1 et seq.

29 §1260.45. Pharmacy benefit manager; prohibited conduct

1 limitations are hereby continued in effect by incorporation into this Chapter by
2 citation:

3 * * *

4 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
5 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38,
6 691.56, 732, 752, 753, 771, 834, 972(D), 976, 1008, 1019.2, 1203, **1260.44**, 1460,
7 1464, 1466, 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3,
8 1927, 1929, 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303

9 * * *

10 Section 3. R.S. 22:1657 is hereby repealed.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST

SB 164 Original

2019 Regular Session

Morrish

Present law provides for regulation of prior authorization procedures for prescription drugs. Proposed law retains present law and makes technical changes.

Present law requires insurers to provide certain override procedures for physicians when step therapy or fail first protocols are utilized. Proposed law retains present law and adds a process for exemption from step therapy for patients who have clinical documentation that a prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event. Proposed law provides that a plan shall not be prevented from requiring a patient to try a generic drug. Proposed law provides that a practitioner shall not be prevented from prescribing what he determines to be medically necessary.

Present law requires pharmacy benefit managers to be licensed by the commissioner of insurance as a third party administrator. Proposed law repeals present law and establishes specific pharmacy benefit manager licensure and regulation authority for the commissioner of insurance. Proposed law provides for findings and purpose, rulemaking, license authority, and enforcement.

Present law prohibits pharmacy benefit managers from imposing contract provisions on pharmacists that prevent the pharmacist from informing patients of all relevant options when acquiring prescription drugs. Proposed law retains present law.

Present law establishes a dedicated location on the Department of Insurance's website for certain information regarding pharmacy benefit managers. Present law implements the website on January 1, 2020. Proposed law retains present law.

Effective August 1, 2019.

(Amends R.S. 22:1006.1(A),1053(D), and 44:4.1(B)(11); adds R.S. 22:1053(E) and (F), and 1260.41 - 1260.46; repeals R.S. 22:1657)